

HOUSE No. 1023

By Mr. Mariano of Quincy, petition of Ronald Mariano and others relative to reforming private passenger automobile insurance in the Commonwealth. Financial Services.

The Commonwealth of Massachusetts

PETITION OF:

Ronald Mariano
Robert P. Spellane

Harriett L. Stanley

In the Year Two Thousand and Seven.

AN ACT REFORMING PRIVATE PASSENGER AUTOMOBILE INSURANCE IN THE COMMONWEALTH.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 9 of Chapter 16 of the General Laws, as
2 appearing in the 2004 Official Edition, is hereby amended by
3 inserting after the fifth sentence the following sentence:— In
4 addition, the registrar shall be responsible for approving driver
5 training courses, including a behind-the-wheel driver training
6 course and an advanced driver training course.

1 SECTION 2. Chapter 29 of the General Laws is hereby
2 amended by adding the following Sections:—

3 Section 2000. (a) There is hereby established and set up on
4 the books of the Commonwealth a separate fund to be known as
5 the Municipal Police Insurance Loss Control Fund consisting of
6 revenues deposited into the fund by insurance companies that
7 write private passenger automobile insurance in the Common-
8 wealth. Such companies shall contribute a total of \$1,050,000 to
9 the Municipal Police Insurance Loss Control Fund by the end of
10 each calendar year based on their pro rata share of exposures

11 written in this state as of the most recent calendar year. These
12 costs shall not be passed on to the insureds and shall not be used
13 in any data to establish rates under any of the private passenger
14 automobile insurance laws.

15 (b) These funds shall be deposited into said fund to be
16 expended by the commissioner of insurance. They shall not be
17 subject to fringe or indirect costs. The funds shall be distributed
18 without further appropriation by March 15th of each year in equal
19 amounts of \$150,000 to the municipal police departments in the 7
20 cities in which automobile insurance fraud is at the greatest levels
21 according to the data reported to the Insurance Fraud Bureau of
22 Massachusetts. For the first year, the funds shall be distributed to
23 the police departments of Springfield, Lawrence, Brockton, Lynn,
24 Revere, Chelsea and Boston. The fund recipients shall use such
25 funds exclusively to fight automobile insurance fraud in consulta-
26 tion with the Community Insurance Fraud Initiative of the Insur-
27 ance Fraud Bureau of Massachusetts. In order to receive a grant of
28 such funds for subsequent years, the police departments will be
29 required to prepare a report of their efforts identifying all actions
30 that they have made in this regard including the number of arrests,
31 descriptions of the facts underlying the arrests and the number of
32 prosecutions and convictions in this regard in addition to specific
33 actions that they propose to take in the subsequent year. These
34 reports shall be submitted to the commissioner and the Insurance
35 Fraud Bureau no later than December 31st of each year. Based on
36 the success of the police departments' respective fraud fighting
37 efforts, their proposals for fighting fraud in the subsequent year
38 and the statistical need for assistance in high fraud areas, the com-
39 missioner will decide, in consultation with the Insurance Fraud
40 Bureau, not later than March 1st of each year as to which police
41 departments will receive the funding for that year.

42 (c) The funds that the police departments receive in connection
43 with this program shall be used solely to fight automobile insur-
44 ance fraud. Any funds not expended by the police departments
45 within 12 months of their receipt shall be returned to the commis-
46 sioner who shall keep the funds in a separate account. These funds
47 shall be made available on a pro rata basis to the police depart-
48 ments selected to receive funding during the next calendar year in
49 accordance with this section.

50 Section 2PPP. (a) There is hereby established and set up on the
51 books of the Commonwealth a separate fund to be known as the
52 District Attorney Insurance Loss Control Fund consisting of rev-
53 enues deposited into the fund by insurance companies that write
54 private passenger automobile insurance in the Commonwealth.
55 Such companies shall contribute a total of \$900,000 to the District
56 Attorney Insurance Loss Control Fund by the end of each calendar
57 year based on their pro rata share of exposures written in this state
58 as of the most recent calendar year. These costs shall not be
59 passed on to the insureds and shall not be used in any data to
60 establish rates under any of the private passenger automobile
61 insurance laws.

62 (b) These funds shall be deposited into said fund to be
63 expended by the commissioner of insurance. They shall not be
64 subject to fringe or indirect costs. The funds shall be distributed
65 without further appropriation by March 15th of each year in equal
66 amounts of \$150,000 to the office of the district attorney in the 6
67 counties in which automobile insurance fraud is at the greatest
68 levels according to the data reported to the Insurance Fraud
69 Bureau of Massachusetts. For the first year, the funds shall be dis-
70 tributed to the office of the district attorney in the counties of
71 Essex, Middlesex, Hamden, Suffolk, Norfolk and Plymouth. The
72 fund recipients shall use such funds exclusively to fight automo-
73 bile insurance fraud in consultation with the Community Insur-
74 ance Fraud Initiative of the Insurance Fraud Bureau of
75 Massachusetts. In order to receive a grant of such funds for subse-
76 quent years, the office of the district attorney is required to pre-
77 pare a report of their efforts identifying all actions that they have
78 made in this regard including the number of arrests, descriptions
79 of the facts underlying the arrests and the number of prosecutions
80 and convictions in this regard in addition to specific actions that
81 they propose to take in the subsequent year. These reports shall be
82 submitted to the commissioner and the Insurance Fraud Bureau no
83 later than December 31st of each year. Based on the district attor-
84 ney's past success fighting fraud, their proposals for fighting fraud
85 in the subsequent year and the statistical need for assistance in
86 high fraud areas, the commissioner will decide, in consultation
87 with the Insurance Fraud Bureau, not later than March 1st of each

88 year as to which district attorney's offices will receive the funding
89 for that year.

90 (c) The funds that the district attorneys receive in connection
91 with this program shall be used solely to fight automobile insur-
92 ance fraud. Any funds not expended by the district attorneys
93 within 12 months of their receipt shall be returned to the commis-
94 sioner who shall keep the funds in a separate account. These funds
95 shall be made available on a pro rata basis to the office of the dis-
96 trict attorney selected to receive funding during the next calendar
97 year in accordance with this section.

1 SECTION 3. Section 1 of Chapter 90 of the General Laws, as
2 appearing in the 2004 Official Edition, is hereby amended by
3 striking out, in line 341, the words "under five years of age".

1 SECTION 4. Section 7AA of Chapter 90, as so appearing, is
2 hereby amended by striking out in lines 1 and 2, the words "under
3 age five and no child weighing forty pounds or less" and inserting
4 in place thereof the following words:— weighing less than 60
5 pounds.

1 SECTION 5. Said Section 7AA of said Chapter 90, as so
2 appearing, is hereby further amended by striking out, in line 6, the
3 words "five years of age or older" and inserting in place thereof
4 the following words:— 60 pounds or over.

1 SECTION 6. Said Section 7AA of said Chapter 90, as so
2 appearing, is hereby further amended by striking out twice, in line
3 22, the word "twenty-five" and inserting in place thereof the
4 following figure:— 150.

1 SECTION 7. Section 22F of Chapter 90, as so appearing, is
2 hereby amended by adding the following paragraph:—

3 Notwithstanding any other provision of this section, upon
4 receiving notification from the merit rating board that a driver has
5 had 5 motor vehicle violations and/or at fault accidents within the
6 past 3 years, the registrar shall require the driver to participate in
7 and complete a driver education program satisfactory to the regis-
8 trar. A driver ordered to complete such a program may appeal the

9 order to the registrar. Such appeal shall be limited to the accuracy
10 of the merit rating board's records. If such driver fails to provide
11 to the registrar proof of completion of such driver education pro-
12 gram within 90 days after the registrar mails to the driver notice
13 of such requirement, the registrar shall suspend the driver's
14 license or right to operate a motor vehicle until the registrar
15 receives proof of completion of such driver education program.

1 SECTION 8. Section 34A of Chapter 90, as so appearing, is
2 hereby amended by striking out, in lines 44 and 87, the words
3 "other than" and inserting in place thereof the following word:—
4 including.

1 SECTION 9. Said Section 34A of Chapter 90, as so appearing,
2 is hereby further amended by striking out, in lines 49 and 50 and
3 92 and 93, the word "Commonwealth" and inserting in place
4 thereof the following words:— United States or Canada.

1 SECTION 10. Said Section 34A of Chapter 90, as so appearing,
2 is hereby further amended by striking out, lines 122 through 243,
3 inclusive.

1 SECTION 11. Chapter 90 is hereby amended by striking out
2 Section 34M, as so appearing, and inserting in place thereof the
3 following section:—

4 Section 34M. (a) Every motor vehicle liability policy and every
5 motor vehicle liability bond, as defined in Section 34A of this
6 chapter, issued or executed in this Commonwealth shall provide
7 personal injury protection benefits as set forth in this section
8 except to the extent such defined benefits may be modified,
9 reduced or eliminated by the purchase of the deductible authorized
10 in this section.

11 (b) The following classes of persons shall be eligible to receive
12 personal injury protection payments:—

13 (1) the named insured or obligor on a motor vehicle liability
14 policy or bond, respectively;

15 (2) members of the insured's or obligor's household;

16 (3) any authorized operator of or passenger in the insured's or
17 obligor's motor vehicle;

18 (4) any pedestrian, including persons operating bicycles, tricy-
19 cles and similar vehicles, persons on horseback or in vehicles
20 drawn by horses or other draft animals, who is struck by the
21 insured's or obligor's motor vehicle; and

22 (5) insureds, obligors and members of their households if
23 injured while in, upon, entering into or alighting from a motor
24 vehicle that does not include personal injury protection, or struck
25 while a pedestrian by such a vehicle; provided that persons who
26 recover through a tort action the losses and expenses resulting
27 from the motor vehicle accident shall not be eligible for payments
28 under this subsection.

29 (c) Notwithstanding subsection (b), an insurer may deny per-
30 sonal injury protection benefits to a person if he, while operating a
31 motor vehicle in the Commonwealth, contributed to his injury in
32 any of the following ways:—

33 (1) operating under the influence of alcohol or a controlled sub-
34 stance as defined in Section 1 of Chapter 94C or the vapors of
35 glue;

36 (2) while committing a felony or seeking to avoid lawful appre-
37 hension or arrest by a police officer; or

38 (3) by acting with specific intent to cause injury or damage to
39 himself or others.

40 (d) Payments shall be made only for losses and expenses
41 incurred by accident, and not suffered intentionally, while in or
42 upon, or entering into or alighting from, or being struck as a
43 pedestrian by the insured's or obligor's motor vehicle, without
44 regard to negligence or gross negligence or fault of any kind.

45 (e) The total limit amounts paid under personal injury protec-
46 tion coverage on account of injury to or death of any one person
47 shall be at least \$8,000; provided that personal injury protection
48 coverage shall pay no more than \$2,000 to an injured person in
49 health care services as defined in subsection (h) if such services
50 provided to the injured person as a result of a motor vehicle acci-
51 dent are, or will be, compensated, paid or indemnified pursuant to
52 any policy of health, sickness or disability insurance or any group
53 contract or agreement to provide, pay for or reimburse the injured
54 person for health care services.

55 (f) No payments shall be made if the injured person is entitled
56 to payments or benefits under Chapter 152.

57 (g) No payments shall be made to anyone who, at the time of
58 the accident, was operating or occupying a motorcycle, and any
59 motor vehicle not subject to motor vehicle registration, or a
60 motorized bicycle, including a moped.

61 (h) Payments for personal injury protection coverage pursuant
62 to Section 34S of this chapter shall be made to or for the benefit
63 of injured persons to cover losses and expenses that fall within the
64 following categories:—

65 (1) Health care services, consisting of reasonable expenses
66 incurred within 2 years from the date of the accident for necessary
67 medical, surgical, diagnostic and dental services, including pros-
68 thetic devices and necessary ambulance, hospital, professional
69 nursing and funeral services;

70 (2) Lost income, consisting of (i) income actually lost by per-
71 sons employed or self-employed at the time of the accident,
72 because of the inability to work and earn compensation, in the
73 form of wages, salary, or their equivalent, but not other income
74 that would otherwise have been earned in the normal course of the
75 person's employment, such as bonuses or profit sharing; provided
76 that the payments for such lost compensation shall be limited to
77 an amount that will provide 75 per cent of the person's average
78 weekly compensation for the year immediately preceding the acci-
79 dent, or (ii) the actual amount of diminution of earning power for
80 persons who are not employed or self-employed at the time of the
81 accident; and

82 (3) Household services, including reasonable amounts actually
83 paid to others, not members of the injured person's household, for
84 providing ordinary and necessary services that the injured person
85 would otherwise have performed, not for income but for the ben-
86 efit of himself or members of his household.

87 (i) No health, sickness or disability insurance policy, and no
88 contract or agreement of any entity to provide, pay for or reim-
89 burse the cost of health care services shall deny claims relating to
90 injuries suffered in a motor vehicle accident on the grounds that
91 the injured person has personal injury protection coverage.

92 (ii) Notwithstanding the provisions of Section 70A of Chapter
93 111, an entity that has provided, paid for, or reimbursed and
94 injured person for health care services shall not recover any
95 amount against the injured person, shall not be subrogated to the

96 rights of the injured person for more than \$2,000 of personal
97 injury protection benefits, and shall not have a lien against the
98 injured person's personal injury protection benefits on account of
99 its provisions, payment, or reimbursement of health care service.

100 (k) Within 2 years of the accident the insurer providing the per-
101 sonal injury protection coverage may, if the injured person
102 receiving benefits has any insurance policy that provides health
103 benefits or disability income coverage and the injured person is
104 unable or refuses to pay the cost of renewing or maintaining such
105 policies in force, tender to the injured person the cost of renewing
106 or maintaining such policy in force for the 2 year period. An
107 injured person who receives such tender shall continue the
108 existing policy of insurance or equivalent policy in force for the 2
109 year period. Prior to the receipt of such tender, the injured person
110 shall not be compelled to renew or maintain in force any policy of
111 insurance. The tender of the cost of renewing or maintaining
112 insurance shall not interfere with the claimant's choice of physi-
113 cian or medical treatment.

114 (l) Payments under personal injury protection coverage for lost
115 income, whether in the form of wages, salary, or their equivalent,
116 to persons who are entitled to compensation under any income
117 continuation program applicable to periods of inability to work,
118 shall be coordinated with benefits payable under such program to
119 ensure that the total amount payable under both programs is no
120 more than 75 per cent of the person's average weekly compensa-
121 tion for the year immediately preceding the accident.

122 (1) The motor vehicle insurer shall reimburse those income
123 continuation programs which provide for accumulated benefits
124 which can be converted into cash or additional retirement credit
125 for the amount the program actually pays to the injured person:
126 said reimbursements shall not exceed 75 per cent of the injured
127 person's average weekly compensation for the year immediately
128 preceding the accident.

129 (2) An injured person who receives compensation under a wage
130 continuation program and also recovers these benefits from
131 another source shall be entitled to reimburse the wage continua-
132 tion program with no loss of standing under such program.

133 (3) If payments to an injured person under any program for
134 wage continuation reduce the amounts paid under personal injury

135 protection for lost income, and the benefits under that program are
136 subsequently exhausted, rendering the injured person unable to
137 receive wage compensation for a later injury or illness, lost
138 income, in an amount equal to the reduction in the payments pre-
139 viously made to the injured person, shall be treated as lost income
140 resulting from the injury for which the personal injury protection
141 payments were made, if the loss is incurred within 1 year after the
142 receipt of the last benefit provided under personal injury protec-
143 tion coverage.

144 (m) A person injured in a motor vehicle accident who may be
145 eligible for payment of personal injury protection benefits shall
146 provide prompt notice to the insurer of any accident that may
147 form the basis of a claim. Such notice shall be given within 5 days
148 after the accident. This time limitation shall apply unless the
149 injured person or that person's representative submits written
150 proof providing clear and reasonable justification for the failure to
151 comply with such time limitation.

152 (n) Within 15 days after an insurer's receipt of notice of an
153 accident by a claimant under this section, the insurer shall furnish
154 such forms as are usually furnished by it for filing proofs of
155 claims.

156 (o) The personal injury protection benefits due and payable
157 under any motor vehicle liability policy or bond as a result of the
158 provisions therein providing personal injury protection benefits,
159 and any benefits due any person entitled to make claim under the
160 assigned claims plan established in accordance with Section 34N
161 of this chapter, are granted in lieu of damages otherwise recover-
162 able by the injured person or persons in tort as a result of an acci-
163 dent occurring within the Commonwealth.

164 (p) Every owner, registrant, operator or occupant of a motor
165 vehicle to which personal injury protection benefits apply who
166 would otherwise be liable in tort, and any person or organization
167 legally responsible for his acts or omissions, is hereby made
168 exempt from tort liability for damages because of bodily injury,
169 sickness, disease or death arising out of the ownership, operation,
170 maintenance or use of such motor vehicle to the extent that the
171 injured party is, or would be had he or someone for him not
172 purchased a deductible authorized by this section, entitled to
173 recover under those provisions of a motor vehicle liability policy

174 or bond that provide personal injury protection benefits or from
175 the insurer assigned. No such exemption from tort liability shall
176 apply in the case of an accident occurring outside the Common-
177 wealth. However, if any person claiming or entitled to benefits
178 under the personal injury protection provisions of a policy or bond
179 insuring a vehicle registered in the Commonwealth brings, in such
180 a case, an action in tort against the owner or person responsible
181 for the operation of such a vehicle, amounts otherwise due such a
182 person under the provisions of this section shall not become due
183 and payable until a settlement is reached or a final judgment is
184 rendered in such a case and the amounts then due shall be reduced
185 to that extent that damages for expenses and loss otherwise recov-
186 erable as a personal injury protection benefits are included in any
187 such settlement or judgment.

188 (q) Non-cooperation of an injured party or failure to timely pro-
189 vide required notices or proofs of claim under this section or
190 Section 34S of this chapter shall be a defense to the insurer in any
191 suit for benefits authorized by this section and failure of an
192 insurer to pay benefits in the event of such non-cooperation shall
193 not in any way affect the exemption from tort liability granted
194 herein.

195 (r) Any insurer paying benefits in accordance with the provi-
196 sions of this section shall be subrogated to that extent to the rights
197 of any party it pays and may bring an action in tort against any
198 person liable for such damages in tort who is not exempt from
199 said liability as a result of the provisions of this section; provided,
200 however, that no insurer shall reduce or limit the amount of lia-
201 bility insurance otherwise available to an injured person as a
202 result of such subrogation. Said insurer is also hereby given the
203 right to make claim for all expenses it incurs on account of such
204 payments, including the net amount of benefits paid, costs of pro-
205 cessing claims for any such benefits, and the expenses of
206 enforcing this right, against any other insurer providing a motor
207 vehicle liability policy or bond on a motor vehicle registered in
208 the Commonwealth, whose owner or operator would, except for
209 the exemption from tort liability provided in this section, be liable
210 for such damages in tort. Determination as to whether any insurer
211 is legally entitled to recover any such expense from another

212 insurer shall be made by agreement between the involved insurers,
213 or, if they fail to agree, by arbitration.

214 (s) Each insurer providing personal injury protection shall issue
215 to any person purchasing a motor vehicle liability policy or bond,
216 at his option, a policy endorsement, approved as to content by the
217 commissioner of insurance, which shall provide that there shall be
218 deducted from amounts that would otherwise be or become due to
219 the policy- holder alone or to the policyholder and members of his
220 household, as the policyholder elects, an amount of either \$100,
221 \$250, \$500, \$1,000, \$2,000, \$4,000 or \$8,000, again as the policy-
222 holder elects, said amount to be deducted from the amounts other-
223 wise due each person subject to the deduction. Any person
224 electing such an endorsement or subject to such an endorsement
225 as a result of the policyholder's election shall have no right to
226 claim or to recover any amount so deducted from any owner, reg-
227 istrant, operator or occupant of a motor vehicle or any person or
228 organization legally responsible for any such owner's, registrant's,
229 operator's or occupant's acts or omissions who is made exempt
230 from tort liability by this section. Amounts deducted from pay-
231 ment in accordance with the provisions of this subsection shall not
232 have any effect upon the determination of whether or not the rea-
233 sonable and necessary expenses incurred as a result of any injury
234 exceed or do not exceed \$500, which determination may affect an
235 injured person's right under Section 6D of Chapter 231.

236 (t) Personal injury protection benefits and benefits due from an
237 insurer assigned shall be due and payable in accordance with
238 Section 34S of this chapter, provided, however, that an insurer
239 may agree to a lump sum discharging all future liability for such
240 benefits on its own behalf and on behalf of the insured or obligor.
241 With respect to such benefits, and to medical coverage contained
242 in Section 113C of Chapter 175, no insurer shall refuse to pay a
243 bill for medical services submitted by a practitioner registered or
244 licensed under the provisions of Chapter 112, if such refusal is
245 based solely on a medical review of the bill or of the medical
246 services underlying the bill, which review was requested or con-
247 ducted by the insurer, unless the insurer has submitted, for med-
248 ical review, such bill or claim to at least one practitioner
249 registered or licensed under the same Section of Chapter 112 as
250 the practitioner who submitted the bill for medical services.

251 (u) The commissioner of insurance may promulgate rules and
252 regulations implementing the provisions of this section, including
253 coordination of benefits provided for in this section, Section 34S,
254 and Section 113C of Chapter 175.

1 SECTION 12. Section 34N of Chapter 90, as so appearing, is
2 hereby amended by striking out, in line 17, the words “thirty-four
3 A” and inserting in place thereof the following figure:— 34M.

1 SECTION 13. Chapter 90 of the General Laws, is hereby
2 amended by adding the following section:—

3 Section 34S. (a) All health care benefits provided under com-
4 pulsory motor vehicle insurance coverages, including bodily
5 injury liability and personal injury protection as defined in Sec-
6 tions 34A and 34M of this chapter, respectively, and uninsured
7 motorist as defined in Section 113L of Chapter 175 shall be made
8 in accordance with this section.

9 (b) The rate of payment by insurers for such health care bene-
10 fits shall not exceed the rates established by the division of health
11 care finance and policy pursuant to Section 13 of Chapter 152;
12 provided, however, that a different rate may be agreed upon
13 between the insurer and the health care provider.

14 (c) The total number of treatments for services not provided by
15 or under the direct supervision of a medical doctor licensed under
16 Section 2 of Chapter 112 or a dentist licensed under Section 45 of
17 Chapter 112, including but not limited to treatments by acupunc-
18 turists, massage therapists, physical therapists, physical therapists
19 assistants and chiropractors are limited to an aggregate of 10 visits
20 per injured person, per accident; provided, however, that any addi-
21 tional such treatments may be covered by endorsement subject to
22 additional charge. This limitation shall not apply to necessary hos-
23 pital, surgical, dental, prosthetic, ambulance, diagnostic, profes-
24 sional nursing services or funeral services.

25 (d) Notwithstanding Section 108 of Chapter 175, in the case of
26 a claim for health care benefits, the claimant or that person’s
27 assignee or representative shall submit a written proof of claim to
28 the insurer, including full particulars of the nature and extent of
29 the injuries and treatment received and contemplated, as soon as
30 reasonably practicable but, in no event later than 45 days after the

31 date services are rendered. This time limitation for the submission
32 of the proof of claim shall apply unless the claimant or that per-
33 son's representative submits written proof providing clear and rea-
34 sonable justification for the failure to comply with such time
35 limitation.

36 (e) Within 45 days from said receipt of proof of claim if pay-
37 ment is not made, the insurer shall notify the claimant in writing
38 specifying the reasons for the nonpayment or whatever future doc-
39 umentation is necessary for payment of the claim within the terms
40 of the policy. If the insurer fails to comply with the provisions of
41 this paragraph, the insurer shall pay, in addition to any benefits,
42 which inure to such claimant or provider, interest on such bene-
43 fits, which shall accrue beginning 45 days after the insurer's
44 receipt of the proof of claim at the rate of 1½ per cent per month,
45 not to exceed 18 per cent per year. The provisions of this para-
46 graph relating to interest payments shall not apply to a claim that
47 an insurer is investigating in good faith and in a reasonably
48 prompt manner because of suspected fraud.

49 (f) Upon request by the insurer, a claimant or that person's
50 assignee or representative shall:—

51 (1) execute a written proof of claim under oath;

52 (2) as may reasonably be required submit to examinations
53 under oath by any person named by the insurer and subscribe the
54 same;

55 (3) provide authorization that will enable the insurer to obtain
56 medical records; and

57 (4) provide any other pertinent information that may assist the
58 insurer in determining the amount due and payable.

59 (g) Notwithstanding the provisions of Section 6D of Chapter
60 231, a claimant for health care service or wage loss expenses shall
61 submit to medical examination by physicians selected by, or
62 acceptable to, the insurer, when, and as often as, the insurer may
63 reasonably require.

64 (h) Any insurer may enter into a preferred provider arrange-
65 ment in compliance with the requirements of Chapter 176I; pro-
66 vided, however, that the utilization review systems of a carrier
67 with a preferred provider arrangement shall not be subject to
68 review under the requirements of Chapter 176I or Chapter 176O.
69 Notwithstanding any other provision of this chapter, if an insurer

70 enters into a preferred provider arrangement for health care serv-
71 ices required under this chapter, those individuals who are subject
72 to the arrangement shall receive such care in the manner pre-
73 scribed by the arrangement; provided, however, that an individual
74 may receive immediate emergency treatment from a health care
75 provider who is not a member of the managed care organization,
76 and the insurer shall pay the reasonable and necessary costs of
77 such treatment.

1 SECTION 14. Chapter 175 of the General Laws is hereby
2 amended by striking out Section 4C, as so appearing, and
3 inserting in place thereof the following section:—

4 Section 4C. No insurer licensed to write and engaged in the
5 writing of homeowners and automobile insurance in this Com-
6 monwealth nor the joint underwriting association, formed pur-
7 suant to the provisions of Chapter 175C or the assigned risk plans,
8 formed pursuant to the provisions of Sections 113H and 113W of
9 Chapter 175, shall take into consideration when deciding whether
10 to provide, renew, or cancel such insurance the race, color, reli-
11 gious creed, national origin, sex, age, ancestry, sexual orientation,
12 children, marital status, veteran status, the receipt of public assis-
13 tance or disability of the applicant or insured. Nothing herein shall
14 preempt any existing remedy provided by law for any action that
15 constitutes a violation of this section.

1 SECTION 15. Chapter 175 of the General Laws is hereby
2 amended by inserting after Section 4C, the following section:—

3 Section 4C½. Consumer protections pertaining to the use of
4 credit.

5 Credit Information, means any credit related information
6 whether obtained as a credit history, a credit report, a consumer
7 report, a credit score, an insurance score or any other compilation
8 or collection of a person's credit. Credit information may not be
9 use as a rating factor in the calculation of premiums for private
10 passenger automobile insurance.

1 SECTION 16. Section 22C of Chapter 175, as so appearing, is
2 hereby amended by striking out, in line 31, the words “upon
3 demand, refund within thirty days all money due to the insured as

4 the result of such cancellation” and inserting in place thereof
5 the following words:— refund all money due to the insured as a
6 result of such cancellation as required under Section 113A of
7 Chapter 175.

1 SECTION 17. Section 108D of Chapter 175, as so appearing, is
2 hereby amended by striking out, in line 1, the word “Whenever”
3 and inserting in place thereof the following words:— Except as
4 provided by subsection (b) of Section 34S of Chapter 90, when-
5 ever.

1 SECTION 18. Section 113A of Chapter 175, as so appearing, is
2 hereby amended by striking out the 15th paragraph and inserting
3 in place thereof the following paragraph:—

4 The insured shall have the option to purchase and the insurer
5 shall not refuse to issue an annual motor vehicle policy or bond
6 providing coverages in accordance with this chapter and Chapter
7 ninety containing any expiration date as the insured may elect.
8 Insurers may offer such policies or bonds for a minimum period of
9 6 months but not more than two years or may issue an extension
10 of any existing policy or bond.

1 SECTION 19. Section 113B of Chapter 175 is hereby repealed.

1 SECTION 20. Chapter 175 is hereby amended by striking out
2 Section 113H, as appearing in the 2004 Official Edition, and
3 inserting in place thereof the following section:—

4 Section 113H. Except as otherwise provided in subsection (c),
5 the following provisions shall not apply to the residual market for
6 private passenger automobile insurance.

7 (a) Insurance companies undertaking to issue motor vehicle lia-
8 bility policies or bonds, except for private passenger automobile
9 policies and bonds, both as defined in Section 34A of Chapter 90,
10 shall cooperate in the preparation and submission of a plan which
11 shall provide motor vehicle insurance to applicants for such poli-
12 cies and bonds who have been unable to obtain insurance through
13 the method by which insurance is voluntarily made available;
14 except that the plan shall provide that no insurance company shall
15 be required to issue such policy or execute such bond if:—

16 (1) The applicant or any person who usually drives the motor
17 vehicle has failed to pay an insurance company any motor vehicle
18 insurance premiums due or contracted during the preceding 12
19 months; or

20 (2) Any person who usually drives the motor vehicle is unli-
21 censed.

22 (b) Such plan shall provide for the fair and equitable apportion-
23 ment among such insurance companies of premiums, losses or
24 expenses, or any combination thereof. Such a plan shall provide
25 that at least the following coverages shall be made available:—

26 (1) bodily injury liability and property damage liability cov-
27 erage in at least the minimum amounts required by law;

28 (2) personal injury protection;

29 (3) medical payments coverage, to a limit of at least \$5,000;

30 (4) increased limits of bodily injury liability coverage in an
31 amount to bring the total bodily injury liability coverage available
32 for any 1 accident to \$250,000 per person and \$500,000 per acci-
33 dent;

34 (5) increased property damage liability limits in an amount to
35 bring the total property damage liability coverage available for
36 any one accident to \$50,000;

37 (6) uninsured motorist limits in an amount up to the bodily
38 injury liability limits of the policy;

39 (7) physical damage insurance, which shall mean: (A) collision
40 coverage or limited collision coverage, (B) fire and theft cov-
41 erage, or (C) comprehensive coverage, so-called, as those cover-
42 ages are defined in Sections 34A and 340 of Chapter 90 and
43 Sections 1130. The plan shall permit the refusal of collision, fire,
44 theft or comprehensive coverage or the charging of rates at the
45 discretion of the insurer, under the following circumstances:—

46 (i) comprehensive, fire and theft or collision coverage on a
47 vehicle customarily driven by or owned by persons convicted
48 within the most recent 5 year period of any category of vehicular
49 homicide, auto insurance related fraud, or motor vehicle theft;

50 (ii) comprehensive, fire and theft or collision coverage on a
51 vehicle customarily driven by or owned by persons who have,
52 within the most recent 5 year period, made an intentional and
53 material misrepresentation in making claim under such coverages;

54 (iii) collision coverage on a vehicle customarily driven by or
55 owned by persons who have been involved in 4 or more accidents
56 in which such person has been deemed to be at fault in excess of
57 50 per cent within the 3 years immediately preceding the effective
58 date of the policy;

59 (iv) comprehensive or fire and theft coverages on a vehicle cus-
60 tomarily driven by or owned by persons who have had 2 or more
61 total theft or fire claims within the 3 years immediately preceding
62 the effective date of the policy;

63 (v) comprehensive, fire and theft or collision coverage on a
64 vehicle customarily driven, or owned by persons convicted I time
65 within the most recent 3 year period of any category of driving
66 while under the influence of alcohol, drugs or the vapors from
67 glue;

68 (vi) comprehensive, fire and theft or collision coverage on any
69 motor vehicle for which a salvage title has been issued by the reg-
70 istrar of motor vehicles unless a new certificate of title has been
71 issued pursuant to Section 20D of Chapter 90D; or

72 (vii) comprehensive, fire and theft or collision coverage on a
73 high-theft vehicle which does not have at least a minimum anti-
74 theft or auto recovery device as prescribed by the commissioner of
75 insurance. The commissioner may designate as a “high-theft
76 vehicle” any vehicle, classified according to make, model and
77 year of manufacture, which has both above-average incidence of
78 theft and above-average original sale price, and may prescribe
79 appropriate anti-theft or auto recovery devices for such vehicles.

80 (c)(1) Such a plan and the plan for the private passenger auto-
81 mobile residual market established pursuant to Section 113W of
82 Chapter 175 shall be prepared and administered by a single gov-
83 erning committee consisting of 13 members appointed by the
84 commissioner for terms of 6 years. Six of the members shall be
85 appointed from the insurance companies participating in the plan
86 and 1 member shall be appointed from an insurance company,
87 which, based on data available as of December 31 of the most
88 recent calendar year, writes less than 2.5 per cent of the annual
89 statewide reported property damage liability exposures, who is
90 unaffiliated with any other insurance company; and 6 members
91 shall be appointed who are insurance producers. The provisions of
92 this section shall not be construed so as to alter or amend the

93 terms of the present governing members. The governing com-
94 mittee shall be responsible for the hiring of the employees of the
95 plan.

96 (2) In the event that a company represented on the committee
97 decreases its book of automobile business in the Commonwealth
98 by more than 10 per cent from the previous calendar year, as
99 determined by the commissioner, the member representing such
100 company shall cease to be a member of the committee and a new
101 company and a member thereof shall be appointed as prescribed
102 herein. Not more than 1 member from any 1 insurance group
103 under the same management shall serve on the committee at the
104 same time.

105 (d) The plan shall provide that every licensed producer shall be
106 assigned to at least 1 servicing carrier; except that the governing
107 committee shall not be required to make any such assignment if,
108 subject to reasonable standards adopted by the governing com-
109 mittee:—

110 (1) the producer has been convicted of a dishonest act related to
111 his occupation as an insurance producer;

112 (2) the producer's license to engage as an insurance producer
113 has been revoked;

114 (3) there has been a material and substantial breach of a con-
115 tract between a servicing carrier and a producer by a producer; or

116 (4) the producer has an uncured default in remittance of any
117 premiums due the servicing carrier.

118 (e) The plan shall permit the appointment and participation of a
119 reasonable number of servicing carriers and the plan shall estab-
120 lish reasonable eligibility requirements for appointment as a ser-
121 vicing carrier, including but not limited to, the maintenance of a
122 specific investigation unit to investigate suspicious or question-
123 able motor vehicle insurance claims for the purpose of eliminating
124 fraud. Not more than 1 insurer in a group under the same manage-
125 ment shall serve as a servicing carrier at the same time. The plan
126 shall provide a specific investigative unit to monitor the effective-
127 ness of servicing carrier fraud control efforts. No domestic insur-
128 ance company shall be denied participation as a servicing carrier
129 based solely upon its share of the Massachusetts motor vehicle
130 insurance market.

131 (f) The governing committee shall on or before March 31, 2007
132 and thereafter not later than 2 years after such standards were
133 most recently approved, prepare performance standards for the
134 handling and payment of claims by the servicing carriers. Such
135 standards shall be designed to ensure the speedy settlement of
136 valid claims at the lowest reasonable cost and the denial of fraud-
137 ulent or otherwise invalid claims. Such performance standards
138 shall be submitted to the commissioner of insurance who, after a
139 public hearing, shall approve or modify such performance stan-
140 dards. The plan shall collect and maintain data on compliance
141 with the performance standards by servicing carriers. Such infor-
142 mation shall be reported annually to the commissioner of insur-
143 ance and may be the basis for adjustment to premiums.

144 (g) No insurer acting as a servicing carrier of the plan, or their
145 employees or producers, no member company, employee or pro-
146 ducer, or any employee of the plan or any official or officer of any
147 law enforcement agency, shall be subject to civil or criminal lia-
148 bility in a cause of action of any kind for furnishing any evidence
149 of information to any specific investigation unit created pursuant
150 to this section, its employees or any law enforcement agency or
151 any other insurer relating to an investigation conducted involving
152 losses under liability or physical damage coverages for motor
153 vehicles.

154 (h) Changes of assignment of servicing carriers, for reasonable
155 business purposes, may be made upon application to and approval
156 by the governing committee, provided there is not a significant
157 disruption of the marketplace and no unfair or inequitable appor-
158 tionment of premiums, losses or expenses.

159 (i) The plan shall include guidelines for the installment pay-
160 ment plans to be provided by the servicing carriers.

161 (j) To control the size of the population of the plan, the plan
162 shall annually provide for territorial and classification credits for
163 those companies voluntarily writing private passenger automobile
164 insurance within those territories and classifications that would
165 otherwise be disproportionately represented in the plan. The size
166 of the credits shall be such as to enhance the purpose that no clas-
167 sification or territory is disproportionately represented in the plan.

168 (k) All policies insured through the plan shall be rated in accor-
169 dance with the manual of classifications, rules and rates, and

170 rating plans filed by or on behalf of the plan under the provisions
171 of Chapter 175A. The statistical data previously and hereafter
172 recorded under this section for risks insured through the plan shall
173 be given due consideration in developing the rates for such risks.

174 (l) The premium charges filed by or on behalf of the plan may
175 provide that such premium charges for any risk insured in the plan
176 will exceed the premium charges that would be used by each
177 risk's servicing carrier for that risk if such risk were not insured in
178 the plan, provided, however, that such a filing shall not go into
179 effect if the commissioner finds that the rate is excessive, inade-
180 quate or discriminatory, or that the rate would adversely affect the
181 financial condition of the insurer or constitute predatory pricing.

182 (m) Meetings of the governing committee shall be conducted in
183 accordance with the provisions of Section 11A½ of Chapter 30A.

184 (n) Before becoming effective and upon any written request of
185 the commissioner on a new plan thereafter, any such plan shall be
186 filed with the commissioner, who shall conduct a public hearing
187 within 30 days to determine whether such plan is consistent with
188 public policy and meets the requirements of this section. At such
189 hearing, insurance companies and any other party having a direct
190 interest shall have an opportunity to be heard. Unless sooner
191 approved or disapproved in writing by the commissioner, such
192 plan shall be deemed to meet the requirements of this section
193 within 30 days after the public hearing.

194 (o) Amendments to such plan shall be prepared and filed with
195 the commissioner as herein provided with respect to the original
196 plan. Such amendments, unless sooner approved or disapproved in
197 writing by the commissioner, shall be deemed to meet the require-
198 ments of this section in 30 days from the date of filing. The com-
199 missioner shall, prior to the disapproval of any such amendments,
200 issue a notice specifying in what respects the amendments do not
201 meet the requirements of this section and fixing a date for a public
202 hearing thereon, at which insurance companies and any other par-
203 ties having a direct interest shall have an opportunity to be heard.

204 (p) If the commissioner shall have requested the submission of
205 a new plan or amendments to the plan, and no such plan or
206 amendments have been filed with and approved by the commis-
207 sioner within 60 days after such request, the commissioner may, if
208 he deems it necessary to carry out the purposes of this section,

209 prepare and publish proposed amendments or a proposed plan that
210 in his opinion would carry out the purposes of this section. He
211 shall submit a copy of such proposed amendments or proposed
212 plan to the joint committee on financial services at the time of
213 publication, and shall schedule a public hearing thereon not less
214 than 10 days after the publication thereof. After such hearing the
215 commissioner may promulgate such plan or amendments thereto
216 as he finds will best carry out the purposes of this section.

217 (q) When such plan or amendment has been approved or
218 deemed approved, no insurer may thereafter issue motor vehicle
219 policy or bond unless such insurer shall participate in such an
220 approved plan.

221 (r) Any insurer and any other party affected may appeal to the
222 commissioner from any ruling or decision with reference to the
223 operation of such plan.

224 (s) The rules for such plan shall require that separate statistical
225 data be recorded for risks insured in the plan and may provide
226 incentives and penalties to prevent abuse of such plan. The rules
227 for such plan also include a provision giving the commissioner the
228 authority, after due hearing and investigation, to order that any
229 company he finds using practices which have the effect of distrib-
230 uting risks or expenses or losses of risks unfairly and inequitably
231 on other companies or producers be assigned a share of the
232 expenses and losses of said risks to insure a fair and equitable dis-
233 tribution. The commissioner may relieve any insurer of a part or
234 all of its obligations under the plan, if he finds that the continua-
235 tion of such obligations would threaten the solvency of such
236 insurer.

237 (t) In appointing a statistical agent, the commissioner shall
238 require, in addition to all other duties and responsibilities, that the
239 statistical agent oversee and conduct a closed claim study so-
240 called. In addition to any other information that the commissioner
241 may require, said study shall include the following:— the number
242 of claims filed in a particular year, the average property damage
243 liability coverage claim for said year, the average collision claim
244 for said year, the number of lawsuits filed in said year, the number
245 and average dollar granted in court tried cases in said year, the
246 number and average dollar amount agreed upon in out of court
247 settlements in said year, the average payment arising out of prop-

erty damage in an out of court settlement and through a judicial decision, the number of multiple claims filed under the same vehicle over a 3 year period, the number of claims closed in said year, the number of claims closed without payment in said year and overall motor vehicle accident severity and frequency. The study shall also include a report of the profits and losses of each property and casualty company writing private passenger motor vehicle coverage in the Commonwealth.

(u) Any insurer or group of insurers participating in such plan and any person aggrieved shall be authorized to bring a complaint to the commissioner alleging unfair or unreasonable or improper practices by any insurer or producer. The commissioner shall, in all such cases, cause a proper hearing on such complaint to be held and shall issue such orders as he then deems appropriate.

(v) If the commissioner finds that, after due hearing and investigation, any activities or practices of any insurer or producer in connection with the submission or operation of such plan is unfair or unreasonable or inconsistent with the provisions of this section, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or inconsistent with the provisions of this section, and requiring the discontinuance of such activity or practice.

(w) Any ruling, order or decision of the commissioner under authority of this section shall be subject to review by appeal to the superior court department of the trial court of Suffolk county at the instance of any party in interest, which appeal shall be on the basis of the record of the proceeding before the commissioner. Said court shall have jurisdiction to modify, amend, annul, review or affirm such action, order, finding or decision, shall review all questions of fact and of law involved therein, and may make any other appropriate order or decree. Said court shall determine whether the filing of the appeal shall operate as a stay of any such order or decision of the commissioner.

(x) The plan shall adopt performance standards for claims handling and anti-fraud efforts, for risks insured or reinsured by the plan. All insurers issuing policies insured or reinsured by the plan shall comply with said performance standards. The plan shall develop pre- and post-payment screening systems designed to identify claims overpayments, possible fraudulent claims, and

287 inefficient claims handling practices. The plan shall provide for
288 periodic audits of all members of the plan as required by the com-
289 missioner. The audit shall include policies not insured or reinsured
290 by the plan in order to determine whether there is a difference in
291 claims handling between policies insured voluntarily and those
292 insured or reinsured by the plan. Noncompliance with said perfor-
293 mance standards and audit requirements shall constitute a viola-
294 tion of the provisions of this chapter. The plan shall propose and
295 the commissioner shall establish rules concerning the submission
296 of data by insurers. Such rules shall include penalties for the late
297 submission of data, the submission of faulty data, and the failure
298 of insurers to comply with the express terms of audit requests. In
299 addition, the plan shall provide for appropriate adjustments in the
300 allocation of premiums, losses and expenses among companies for
301 companies which do not meet such performance standards or
302 which do not comply with said audit requirements. Such adjust-
303 ments shall reflect excessive claims payments which result from
304 said noncompliance.

1 SECTION 21. Chapter 175 is hereby amended by striking out
2 section 113I, as so appearing, and inserting in place thereof the
3 following section:—

4 Section 113I. Nothing in this chapter shall be construed to
5 abridge or restrict the freedom of contract between insurers and
6 producers or to require an insurer to issue policies in any way
7 other than through its ordinary and usual method of marketing
8 except that insurers shall, pursuant to the plan approved under
9 113W, be required to recognize and to permit immediate certifica-
10 tion of insurance by and to pay a commission of 10 per cent to any
11 licensed producer designated as the producer of record by appli-
12 cants for insurance or renewal thereof. The governing committee
13 identified under Section 113W can change this commission on the
14 ground that a different commission is fairer and more reasonable
15 under the circumstances provided the governing committee
16 receives prior written approval from the commissioner at least 30
17 days in advance of setting such commission.

1 SECTION 22. Section 113P of Chapter 175 is hereby repealed.

1 SECTION 23. Chapter 175 is hereby amended by adding the
2 following section:—

3 Section 113W. Notwithstanding any other provisions of this
4 chapter, the commissioner of insurance shall devise an assigned
5 risk plan for private passenger automobile insurance in the
6 residual market. The rates for the assigned risk plan shall be
7 developed in accordance with actuarially sound and established
8 practices and procedures and shall be based exclusively on the
9 losses, premiums and expenses of plan participants. Such plan
10 will be administered by the governing committee, pursuant to
11 Section 113H of this chapter. The commissioner shall promulgate
12 such rules and regulations as necessary to implement his plan.

13 The rules and regulations promulgated by the commissioner to
14 implement the assigned risk plan shall include a provision that
15 prohibits any applicant for private passenger auto insurance in the
16 first year of flex band rating who was clean of any auto insurance
17 claim or violation, except for glass coverage claims in the 5 years
18 preceding the policy effective date, being required to obtain cov-
19 erage through said assigned risk plan.

20 The commissioner of insurance is instructed to complete a
21 study on the state of the private passenger auto insurance market
22 including and analysis of the drivers being place in the assigned
23 risk plan. The commissioner of insurance is to make a full report
24 available to the joint committee on financial services and the leg-
25 islature after 2 years of competitive flex band rating has been
26 completed.

1 SECTION 24. Section 162C of Chapter 175 is hereby repealed.

1 SECTION 25. Section 162D of Chapter 175 is hereby repealed.

1 SECTION 26. Section 193R of Chapter 175, as appearing in the
2 2004 Official Edition, is hereby amended by striking out, in line
3 26 through 30, the words “; provided, however, that insurance
4 issued pursuant to a group marketing plan shall be cedeable and
5 the experience of each group plan, both voluntary and ceded, shall
6 be used in determining a company’s losses and expenses in accor-
7 dance with the attribution rules established under the provisions of
8 Section one hundred and thirteen H”.

1 SECTION 27. Said Section 193R of said Chapter 175, as so
2 appearing, is hereby further amended by striking out, in lines 32
3 and 33, the words “having a proper insurable interest” and
4 inserting in place thereof the following words:— who satisfies the
5 eligibility criteria of the plan.

1 SECTION 28. Said Section 193R of said Chapter 175, as so
2 appearing, is hereby further amended by striking out, in lines 70
3 and 78, the words “fixed and”.

1 SECTION 29. Said Section 193R of said Chapter 175, as so
2 appearing, is hereby further amended by striking out, in line 84,
3 the words “Every mutual company providing insurance in accor-
4 dance” and is hereby further amended by striking out, lines 85
5 through 88, inclusive.

1 SECTION 30. Chapter 175A is hereby amended by striking out
2 Section 16, as so appearing, and inserting in place thereof the
3 following section:—

4 Section 16. No person or organization shall withhold material
5 information from, or knowingly give false or misleading material
6 information to, the commissioner, any statistical agency desig-
7 nated by the commissioner, any rating organization, or any
8 insurer, which will affect the rates or premiums chargeable under
9 this chapter.

1 SECTION 31. Chapter 175E of the General Laws is hereby
2 repealed.

1 SECTION 32. Section 1 of Chapter 175I of the General Laws,
2 as appearing in the 2004 Official Edition, is hereby amended by
3 inserting after the word “life,” in lines 3 and 9, the words:— pri-
4 vate passenger automobile,.

1 SECTION 33. Section 2 of said Chapter 175I, as so appearing,
2 is hereby amended by striking out, in lines 66 through 76, the def-
3 inition of “insurance institutions” and inserting in place thereof
4 the following definition:— 5 “Insurance institution”, any corpora-
5 tion, association, partnership, reciprocal exchange, inter-insurer,

6 Lloyd's insurer, fraternal benefit society or other person engaged
7 in the business of insurance, including health maintenance organi-
8 zations, medical service plans, hospital service plans, preferred
9 provider arrangements, insurance companies engaged in the busi-
10 ness of private passenger automobile insurance and savings bank
11 life insurance as defined in Chapters 175, 176, 176A, 176B, 176C,
12 176G, 176I, 178 and 178A. "Insurance institutions" shall not
13 include insurance representatives or insurance-support organiza-
14 tions.

1 SECTION 34. Said Section 2 of said Chapter 175I, as so
2 appearing, is hereby further amended by inserting after the word
3 "transactions", in line 81, the following words:— ", or to any gov-
4 ernmental body or regulatory agency".

1 SECTION 35. Said Section 2 of said Chapter 175I, as so
2 appearing, is hereby further amended by inserting after line 94,
3 the following:—

4 (3) "Insurance-support organization" specifically includes the
5 automobile insurers bureau, Commonwealth automobile reinsurers
6 and the insurance fraud bureau, or their successor organizations.

1 SECTION 36. The General Laws are hereby amended by
2 inserting after Chapter 175J the following chapter:—

3 **CHAPTER 175K.**
4 **FLEXIBLE RATINGS FOR PRIVATE**
5 **PASSENGER AUTOMOBILE INSURANCE.**

6 Section 1. (a) The commissioner shall, on or before Decem-
7 ber 15, 2007, fix and establish fair and reasonable rates for all
8 coverages based on accident involvement in connection with the
9 issuance or execution of private passenger motor vehicle insur-
10 ance policies or bonds that become effective on April 1, 2008.
11 These rates shall also apply to insureds that are ceded to Com-
12 monwealth automobile reinsurers or insured through the assigned
13 risk plan with policy effective dates between April 1, 2008
14 through March 31, 2009. These rates shall also apply to any other
15 policyholder of a company where said company does not have an

16 independent rate on file with the commissioner for all or any por-
17 tion of the period April 1, 2008 through March 31, 2009. This
18 subsection shall be effective through March 31, 2009.

19 (b) Notwithstanding subsection (a), the commissioner shall not
20 alter the statewide average rate level for bodily injury or personal
21 injury protection based on accident involvement as defined in
22 Sections 34A and 34M of Chapter 90 or Section 113C of Chapter
23 175. The statewide average rates that will be implemented for
24 bodily injury and personal injury protection will be equal to the
25 average rate that the commissioner set on December 15, 2007 and
26 that were in place and became effective as of April 1, 2008. These
27 rate levels will remain in effect for policies with effective dates
28 through March 31, 2010. In accordance with the provisions of
29 subsection (j) and (k.) of Section 2, insurance companies may file
30 to increase the statewide average rates for bodily injury or per-
31 sonal injury protection between April 1, 2008 and March 31, 2010
32 only in the event that a change occurs in the fee schedule applic-
33 able to these coverages under Section 34S of Chapter 90. In such
34 an event, the filed change shall be commensurate with the amount
35 of the change in the fee schedule as applied to the services pro-
36 vided to those injured by automobile accidents. This subsection
37 shall be effective through March 31, 2010.

38 (c) Not later than August 1, 2008, the industry or its designated
39 rating or advisory organization shall file with the commissioner
40 loss and claim experience current through December 31, 2007.
41 Such data shall include, but not be limited to, accident year losses,
42 trends, and driver class and territory pure premium relatives for
43 each coverage. This subsection shall be effective from April 1,
44 2008 through March 31, 2009.

45 (d) Not later than August 1, 2009, the industry or its designated
46 rating or advisory organization shall file with the commissioner
47 loss and claim experience current through December 31, 2008.
48 Such data shall include, but not be limited to, accident year losses,
49 trends, and driver class and territory pure premium relativities for
50 each coverage. The industry or its designated rating or advisory
51 organization will also file with the commissioner by such date a
52 rate and rating plan for drivers insured through the assigned risk
53 plan to be effective April 1, 2010. This subsection shall be effec-
54 tive from April 1, 2008 through March 31, 2010.

55 (e) The commissioner may make such rules and regulations as
56 are necessary or proper to carry out the provisions of this section.

57 Section 2. (a) For purposes of this chapter, the following words
58 shall have the following meanings:—

59 “Commissioner”, the Commissioner of Insurance.

60 “Compulsory insurance”, bodily injury liability and personal
61 injury protection as defined in Section 34A and 34M of Chapter 90,
62 property damage liability as defined in Section 340 of Chapter 90,
63 and uninsured motorist as defined in Section 113L of Chapter 175.

64 “Flex band”, the percentage change in the average rate level for
65 insurance policies covering losses or liabilities within the private
66 passenger automobile insurance market wherein increases or
67 decreases shall be no greater than the stated amount in subsections
68 (b), (c), (d), (e) and (f) of the prior average rate implemented for
69 all classifications and risks written by the filing company. Rate
70 increases or decreases within the flex band shall be allocated to
71 classifications and risks based on the actuarially indicated rate for
72 said classification or risk.

73 “Insurance company” or “insurer”, a company licensed to or
74 authorized to write private passenger automobile insurance pur-
75 suant to Section 47 of Chapter 175.

76 “Reference filing”, upward and downward rate deviations
77 adopted by an insurer relative to the commissioner’s fix and estab-
78 lished rate effective from April 1, 2008 through March 31, 2009.
79 An insurer’s upward and downward rate deviations must be actu-
80 arially supported by the insurer’s loss and expense experience.

81 (b) All insurers writing private passenger automobile insurance
82 for policies effective on or after April 1, 2008 and on or before
83 March 31, 2009, must file a reference filing to the commissioner’s
84 rates established for that period. The reference filing, at a mini-
85 mum, shall include a minus 5 per cent rate rollback for those vehi-
86 cles rated based on the experience of insured drivers who (1) have
87 a minimum of 6 years of driving experience and who have had no
88 at fault accidents or traffic violations in the 6 consecutive years
89 preceding the policy’s effective date or (2) are occasional opera-
90 tors who have less than 6 years driving experience and who have
91 had no at-fault accidents or violations. Insurers’ reference filings
92 may not apply upward rate deviations to drivers eligible for the
93 rollback. This subsection shall be effective from April 1, 2008
94 through March 31, 2009.

95 (c) Overall average rate level increases or decreases proposed
96 by an insurer, for all coverages combined, of 5 per cent above or
97 below the commissioner's rate as set for 2008, shall take effect.
98 Notwithstanding this provision, no vehicle's rate for liability cov-
99 erages can increase more than 15 per cent in any one 12 month
100 period, provided that there is no change in the individual insured's
101 circumstances including, but not limited to, coverages or coverage
102 options purchased, driving record, years of driving experience,
103 vehicles insured, the garaging location of the insured's vehicle, or
104 the company insuring the vehicle. Insurers must use the territory
105 definitions prescribed by the commissioner for policies issued
106 between April 1, 2008 and March 31, 2009. This subsection shall
107 be effective from April 1, 2008 through March 31, 2009.

108 (d) Overall average rate level increases or decreases, for all
109 coverages combined, of 6 per cent above or below the company's
110 rate that is currently in effect on March 31, 2009 shall take effect.
111 Notwithstanding this provision, no vehicle's rate for liability cov-
112 erages can increase more than 15 per cent in any one 12 month
113 period, provided that there is no change in the individual's cir-
114 cumstances including, but not limited to, coverages or coverage
115 options purchased, driving record, years of driving experience,
116 vehicles insured, the garaging location of the insured's vehicle, or
117 the company insuring the vehicle. Insurers must use the territory
118 definitions prescribed by the commissioner for policies issued
119 between April 1, 2008 and March 31, 2009. This subsection shall
120 be effective from the period of April 1, 2009 through March 31,
121 2010.

122 (e) Overall average rate level increases or decreases, for all
123 cover- ages combined, of 7 per cent above or below the company's
124 rate that is currently in effect, shall take effect. Notwithstanding
125 this provision, no vehicle's rate for liability coverages can
126 increase more than 15 per cent in any one 12 month period, pro-
127 vided that there is no change in the individual's circumstances
128 including, but not limited to, coverages or coverage options pur-
129 chased, driving record, years of driving experience, vehicles
130 insured, the garaging location of the insured's vehicle, or the com-
131 pany insuring the vehicle. Insurers must use the territory defini-
132 tions prescribed by the commissioner for policies issued between
133 April 1, 2008 and March 31, 2009. This subsection shall be effec-
134 tive for the period April 1, 2010 through March 31, 2011.

135 (f) Overall average rate level increases or decreases, for all cov-
136 erages combined, of 8 per cent above or below the company rate
137 that is currently in effect, shall take effect. Notwithstanding this
138 provision, no vehicle's rate for liability coverages can increase
139 more than 15 per cent in any one 12 month period, provided that
140 there is no change in the vehicle's coverages or coverage options
141 purchased, driving record, years of driving experience, vehicles
142 insured, the garaging location of the insured's vehicle, or the com-
143 pany insuring the vehicle. Insurers may vary rates by town code,
144 but they may not geographically base rates that further divide the
145 town code by zip code or other means. This subsection shall be
146 effective from the period April 1, 2011 through March 31, 2012.

147 (g) Overall average rate level increases or decreases, for all
148 coverages combined, of 10 per cent above or below the company
149 rate that is currently in effect, shall take effect. Not withstanding
150 this provision, no vehicle's rate for liability coverages can
151 increase more than 15 per cent in any one 12 month period, pro-
152 vided that there is no change in the vehicle's coverages or cov-
153 erage options purchased, driving record, years of driving
154 experience, vehicles insured, the garaging location of the
155 insured's vehicle, or the company insuring the vehicle. Insurers
156 may vary rates by town code, but they may not geographically
157 base rates that further divide the town code by zip code or other
158 means. This subsection shall be effective from the period April 1,
159 2012 through March 31, 2013.

160 (h) In the event that an insurance company that wrote less than
161 0.1% of all private passenger vehicles insured in Massachusetts as
162 of December 31, 2007, first files independent private passenger
163 automobile insurance rates in Massachusetts after March 31, 2009
164 and before April 1, 2013, said company shall be entitled to use the
165 commissioner's rate as set to be effective as of April 1 2008, in
166 addition to the flex band identified in the above subsections (c)
167 through (g) cumulatively for all years. During its second year of
168 doing business in Massachusetts, such filing company will be sub-
169 ject to the flex band in effect for that year only.

170 (i) An insurance company that wrote .01% or more of all pri-
171 vate passenger vehicles insured in Massachusetts as of December
172 31, 2007 that chooses not to independently file rates utilizing the
173 flex bands in the above subsections (c) though (g) shall be limited

174 to the commissioner's rate set to be effective as of April 1 2008 as
175 modified by the flex band in effect of the year of the filing only.

176 (j) An insurer may file pursuant to this section more frequently
177 than once per year in any 12 month period provided that the rates
178 applied to any policy are the rates in effect on the effective date of
179 the policy. Insurers may not cancel policies mid-term for the sole
180 purpose of changing the rate applicable to the policy.

181 (k) The filing company shall notify all insureds of any such
182 changes as part of its renewal notice that shall be mailed or other-
183 wise delivered by written notice at least 30 but not more than 60
184 days in advance of the end of the policy Period, to the named
185 insured, at the address identified in the policy. Said notice shall
186 state the prospective rate at which coverages will be offered and
187 the duration of the policy period.

188 (l) All rate filings referenced in subsection (b) through (g) shall
189 be made in accordance with the provisions of Section 6 of Chapter
190 175A.

191 (m) In addition to the filing requirements of Section 6 of
192 Chapter 175A, all rate filings must contain actuarial support and
193 must be signed by a member of the Casualty Actuarial Society
194 attesting that the requested filing will not produce rates that are
195 excessive, adequate or unfairly discriminatory for the risks to
196 which they apply, and do not threaten the financial stability of the
197 filing company.

198 (n) In approving an insurer's filing for a rate level change out-
199 side the flex band, the insurer making the filing shall show that, if
200 the rate proposed by the insurer is:—

201 (1) above the flex band, the rates available within such band are
202 inadequate for the risks insured and that failure to approve the
203 filing will cause a lack of availability in the relevant market; or

204 (2) below the flex band, approval of the filing will not
205 adversely affect the financial condition of the insurer or constitute
206 predatory pricing.

207 (o) No company shall consider a surchargeable accident or vio-
208 lation of 5 years or older for the purpose of rating or underwriting.

209 (p) Rates for an insured age 65 or older, who otherwise quali-
210 fies for the lowest rate classification applicable to drivers gener-
211 ally, shall be 25 per cent less than the applicable rate for such
212 classification. All persons who are entitled to such reduction in

213 rate shall be notified annually of such reduction. The percentage
214 of the reduction for each coverage for an insured aged 65 or older
215 shall be itemized on the motor vehicle liability policy. In the event
216 that an insured reaches the age of 65 during the policy year, and is
217 otherwise entitled to said reduction, said insurer shall receive a
218 reduction in premium on a pro rata basis for the remainder of the
219 policy year.

220 (q) If at any time the commissioner finds that a filing, including
221 any rate or rating plan, does not meet the requirements of this
222 chapter, provides rates that are excessive, inadequate or unfairly
223 discriminatory, or includes a rating plan that is unfairly discrimi-
224 natory, he shall, after a hearing held upon not less than ten days
225 written notice, specifying the matters to be considered at such
226 hearing, to every insurer and rating organization which made such
227 filing, issue an order specifying in what respects he finds that such
228 filing fails to meet the requirements of this subsection, and stating
229 when, within a reasonable period thereafter, such filing shall be
230 deemed no longer effective. Copies of said order shall be sent to
231 every such insurer and rating organization. Any person or organi-
232 zation aggrieved with respect to any filing which is in effect may
233 make written application to the commissioner for a hearing
234 thereon; provided, that the insurer or rating organization that made
235 the filing shall not be authorized to proceed under this subsection.
236 Such application shall specify the grounds to be relied upon by the
237 applicant. If the commissioner shall find that the application is
238 made in good faith, that the applicant would be so aggrieved if his
239 grounds are established, and that such grounds otherwise justify
240 holding such a hearing, he shall, within thirty days after receipt of
241 such application, hold a hearing upon not less than ten days
242 written notice to the applicant and to every insurer and rating
243 organization which made such filing. If, after such hearing, the
244 commissioner finds that the filing does not meet the requirements
245 of this subsection, he shall issue an order specifying in what
246 respects he finds that such filing fails to meet the requirements of
247 this subsection, and stating when, within a reasonable period
248 thereafter, such filing shall be deemed no longer effective. Copies
249 of said order shall be sent to the applicant and to every such
250 insurer and rating organization. The commissioner may also call a
251 hearing at any time prior to the proposed effective date of any
252 filing or any later effective date called for by order made pursuant

253 to this chapter. If after such hearing the commissioner finds that
254 any such filing will not meet the requirements of this subsection,
255 said filing shall not take effect.

256 (r) The commissioner may promulgate rules and regulations
257 implementing the provisions of this section.

258 (s) On April 1, 2013, subsections (b) through (g) regarding flex
259 bands and such filings, other than the restriction that no vehicle's
260 rate for liability coverages can increase more than 15 per cent in
261 any 12 month period, shall no longer be applicable.

262 (t) The following provisions apply to company filings for rates
263 to be effective on or after April 1, 2008. For the purposes of tem-
264 pering rates in high rated urban territories, territorial average rates
265 for the bodily injury liability and personal injury protection cover-
266 ages, as defined in Ch. 90, Section, 34A and 34M shall be based
267 on a weighted average loss per insured vehicle where 75 per cent
268 of the weight is applied to the indicated territorial average loss per
269 insured vehicle, and 25 per cent of the weight is applied to the
270 indicated statewide average loss per insured vehicle. Such
271 weighting shall be applied equally to all rating territories used for
272 the purpose of determining private passenger auto insurance pre-
273 miums. Nothing in this section prohibits further adjustment of the
274 final rates charged in any given territory by operation of average
275 rate caps.

276 (u) Gender may be used as a rating factor for operators in their
277 first 6 years of driving experience.

278 Section 3. (a) No insurer or rating organization shall monopo-
279 lize or attempt to monopolize, or combine or conspire with any
280 other person or persons to monopolize, in any territory, the busi-
281 ness of insurance or any kind, subdivision or class thereof.

282 (b) No insurer or rating organization shall agree with any other
283 insurer or rating organization to charge or adhere to any rate,
284 although insurers and rating organizations may continue to
285 exchange statistical information and provided further a rating
286 organization may establish advisory manuals of classifications,
287 rules and rates, rating plans or modifications of any of the fore-
288 going in any manner not prohibited by the commissioner.

289 (c) No insurer or rating organization shall make any agreement
290 with any other insurer, rating organization or other person to
291 restrain trade.

292 (d) No insurer or rating organization shall make any agreement
293 with any other insurer, rating organization or other person the
294 effect of which may be substantially to lessen competition in any
295 territory or in any kind, subdivision or class of insurance.

296 (e) No insurer may acquire or retain any capital stock or assets
297 of, or have any common management with, any other insurer or
298 insurers, if the effect of such acquisition, retention or common
299 management may be substantially to lessen competition in any ter-
300 ritory or in any kind, subdivision or class of insurance.

301 (f) No insurer or rating organization shall make any agreement
302 with any other insurer or rating organization to refuse to deal with
303 any person in connection with the sale of insurance.

304 (g) No rating organization or member or subscriber thereof
305 shall interfere with the right of any insurer to make its rates inde-
306 pendently of such rating organization or to charge rates different
307 from the rates made by such rating organization.

308 (h) No rating organization member or subscriber shall refuse to
309 do business with, or prohibit or prevent the payment of commis-
310 sion to any licensed producer on the ground that such producer
311 does business with an insurer, which makes its rates, or any por-
312 tion thereof, independently of such rating organizations.

313 (i) Nothing contained in this chapter shall be constructed as
314 requiring any insurer to become a member of or a subscriber to
315 any rating organization, or as preventing any insurer, while a
316 member of or subscriber to a rating organization, from making its
317 own rates for any kind, subdivision or class of insurance, for
318 which it does not elect to authorize the rating organization to act
319 on its behalf.

320 (j) Any insurer, which is a member of or a subscriber to a rating
321 organization, may make its own rates for any kind, subdivision or
322 class of insurance. No rating organization shall have authority to
323 act on behalf of any insurer which is a member of or subscriber to
324 such rating organization except as authorized in writing by such
325 members or subscribers, which authority may be supplemented,
326 modified or revoked, in whole or in part, at any time by such
327 member or subscriber at its option.

328 (k) No rating organization shall have or adopt any rule or exe-
329 cute any agreement, or formulate or engage in any program, the
330 effect of which would be to require any member, subscriber or
331 other insurer to utilize some or all of its services, or to adhere to

332 its rates, rating plans, rating systems, underwriting rules, or policy
333 forms, or to prevent any insurer from acting independently.

334 (l) Any rate made in violation of subsections (a) through (k) of
335 this section or Section 4 of this chapter shall be disapproved by
336 the commissioner pursuant to the procedures prescribed in Section
337 7 of Chapter 175A, and each violator shall be punished by a fine
338 of not more than \$10,000 for each offense or by imprisonment for
339 not more than 1 year, or by both; or shall be subject to a civil
340 penalty not to exceed \$1,000 for each such offense which may be
341 assessed in an action brought on behalf of the Commonwealth in
342 any court of competent jurisdiction. The issuance, procurement or
343 negotiation of a single policy of insurance shall be deemed a sepa-
344 rate offense.

345 (m) The commissioner, through the attorney general, and any
346 person injured in his business or property by reason of anything
347 forbidden in aforesaid subsections may maintain an action to
348 enjoin any such violation of such subsection.

349 (n) Any person injured in his business or property by reason of
350 anything forbidden in the aforesaid subsections may maintain an
351 action and shall recover threefold the damages sustained by him.

352 (o) The provisions of subsections (a) through (k) shall not be
353 construed to prohibit 2 or more insurers who by virtue of their
354 business associations in the United States represent themselves to
355 be or are customarily known as an “insurance company group”, or
356 similar insurance trade designation, from having the right to
357 exchange statistical information.

358 (p) The fact that 2 or more admitted insurers, whether or not
359 members or subscribers of a rating or advisory organization, use,
360 either consistently or intermittently, the manuals of classifications,
361 rules and rates, rating plans, modifications of any of the foregoing
362 or recommendations of such organizations, shall not be sufficient
363 in itself to support a finding that an agreement to adhere exists,
364 and may be used only for the purpose of supplementing or
365 explaining direct evidence of the existence of any such agreement.

366 Section 4. (a) No insurer or rating organization shall file in bad
367 faith rates which it knows or should know are grossly inadequate
368 for the insurance coverage provided, and which are filed and used
369 for the purpose of unfairly competing for motor vehicle insurance
370 risks.

371 (b) At any hearing conducted under this section, the burden
372 shall be on the filer to justify that such filing is not in violation of
373 this section. If, after such hearing, the commissioner finds that the
374 filer has filed to so justify such filing, he may order that all poli-
375 cies written under such bad-faith filing be rewritten at rates
376 meeting the requirements of this chapter from the date of incep-
377 tion of such policies, or that all such policies be cancelled on a pro
378 rata basis.

379 Section 5. The commissioner may once in each calendar year
380 establish rules by which the companies shall produce an informa-
381 tion guide which outlines in language prescribed or approved by
382 the commissioner the various choices of coverage available to
383 insureds and an approximation of differences in cost among var-
384 ious types of coverage and among competing carriers. Each com-
385 pany shall bear full responsibility for assuring that a copy of such
386 information guide is forwarded to every person insured or who
387 requests a quote for insurance from that company, or who solicits
388 from that company's producers.

389 Section 6. Insurance companies or their producers shall dis-
390 close in simple language to every person they insure or solicit for
391 insurance that person's coverage options, including the option to
392 exclude oneself and members of one's household from personal
393 injury protection coverage, so-called. The commissioner shall pre-
394 scribe the form, content, and timing of said disclosures.

395 Section 7. (a) An insurer, or a producer, doing business in this
396 state may not require a person to use a particular insurance pre-
397 mium finance company or other installment plan for which a
398 finance charge or other fee in connection with an installment pay-
399 ment has been or will be imposed.

400 (b) An insurer, or a producer, doing business in this state may
401 not refuse to issue a policy of insurance solely because the pre-
402 miums for the policy have been advanced by a premium finance
403 company.

1 SECTION 37. The commissioner, in consultation with the
2 director of the office of consumer affairs and business regulation,
3 shall develop and publish by January 1, 2008 both in hardcopy
4 and on the Division of Insurance's website a "Consumer Bill of
5 Rights for Automobile Insurance," pamphlet setting forth a sum-

6 mary of consumers' rights and responsibilities with respect to
7 such policies.

8 There is hereby established a fund known as the Interactive
9 Auto Insurance Website Fund in the division of insurance, con-
10 sisting of revenues deposited by insurance companies that write
11 private passenger automobile insurance in the state. Such compa-
12 nies shall contribute a total of \$1,000,000 to the division of insur-
13 ance based on their pro rata share of exposures written in this state
14 as of the most recent calendar year.

15 This fund shall be used to make available to the consumer a
16 content neutral interactive website dealing with the purchasing
17 and availability of private passenger auto insurance in the Com-
18 monwealth.

1 SECTION 38. Except as otherwise specified, this act shall take
2 effect upon passage.